that it was kampong land with poor access and much inferior to the land acquired.

So far as it is possible to weigh up all the relevant factors at this later stage it is considered that the approach to the matter by the Government valuers was far more realistic and more substantially correct, in so far as they regarded the land as primarily agricultural land and likely to remain so for some time to come. Nevertheless it seems that Mr. Fraser, if not the deputy collector of land revenue, did appreciate the latent potential of the land for building purposes at some indefinite later time. Once this likelihood is recognised by local people there is no doubt that prices asked and paid for land do tend to appreciate even if in some instances the change appears to an objective observer to be somewhat premature.

Valuation can never be a strictly mathematical process and, in particular, remote potential development value is often not easy to quantify in the absence of an abundance of evidence culled from recent transactions in respect of comparable property. Rarely is the available evidence overwhelmingly convincing and ultimately it becomes a matter of opinion based upon experience.

Almost invariably there emerges from a consideration of all the facts a fairly well-defined range although sometimes somewhat blurred at either end within which the answer clearly must lie and the opinions of those of equal competance and experience may well tend to indicate different points within that range. This is such an instance. The range of possible values is not particularly extensive but it is necessary to bear in mind that there is usually a very substantial gap between the value of land suitable for even the most profitable agricultural purpose and its value for any type of building development. Viewing the figure of $2,000 per acre against this background and having particular regard to the deputy collector of land revenue's categorical statement that he had made no allowance whatsoever for any potential building value it is considered that the figure of $2,000 per acre lies unduly low on the range of possible values. It is an absolute minimum figure rather than a fair and full reflection of the price which it might reasonably be expected the land would have realised had it been sold on the material date.

In the light of all the evidence given and a careful inspection of the land and the surrounding locality and the opinions of Mr. Hake and Mr. Tay in my opinion a fair figure would be $3,500 per acre.

None of the matters referred to in subparagraphs (b), (c), (d) or (e) of paragraph 2 of the First Schedule to the Land Acquisition Act, 1960, appear to have any relevance to the amount of compensation which should be paid in this case.

On the above grounds, in accordance with the provisions of section 47 of the Act:—

(a) the amount awarded on account of the market value of the land is $17,500;

(b) nothing is deducted for any increase in the value of the other land of the owners likely to accrue from the use to which the land acquired will be put;

(c) no amounts are awarded under paragraphs (c), (d) and (e) of section 2 of the First Schedule.

The amount of the court award exceeds the sum awarded by the deputy collector, but the claim of the owners was so excessive that I order the owners to pay their own costs and half the costs of the deputy collector.

I. W. Hake and Tay Hooi Soo, Assessors, concurred.

Order accordingly.

Solicitors: *Presgrave & Matthews.*

ISMAIL BIN CHAT v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) November 9, 1964]

[K.L. — Federal Court Criminal Appeal No. 58 of 1694]

Penal Code, s. 302 — Murder — Failure to put defence to the jury — Court satisfied that even if defence had been put to jury they would have found appellant guilty — Courts of Judicature Act, 1964, s. 60.

Criminal Procedure — Summing-up — Failure to put defence to jury.

In this case the appellant was convicted of murder. The evidence showed that the appellant had shot the deceased persons. At the trial and in his summing up the learned trial judge put to the jury the various defences that were raised, the defence of accident, the defence of provocation, the defence of private defence and the defence of sudden quarrel. He did not however put to the jury the defence that what might be involved was an offence of causing death by doing a rash or negligent act.

Held: as the jury had rejected any question of accident, of provocation or sudden quarrel or of private defence, the omission to put the question of negligence to the jury could have had no effect whatsoever on their decision because it was based on a set of facts which they had clearly rejected; and therefore the case fell within the scope of the proviso to section 60 of the Courts of Judicature Act.

Case referred to:—

(1) *R.* v. *Oster-Ritter* 32 Cr.App.R. 191 at page 193.

FEDERAL COURT.

Dato R. P. S. Rajasooria for appellant.

Gunn Chit Thuan (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): This appellant was tried at Raub on three charges of murder in contravention of section 302 of the Penal Code. He was convicted on each of these charges and sentenced to death. Against these convictions he now appeals.

The charges arose out of an incident which occurred in the late afternoon of 17th March in the town of Kuala Lipis when three people, Wong Chin Yen, Wong Hon Yien and Ng Kwi Yin, were shot and killed. There has never been any doubt, the evidence to that effect was overwhelming and it has not been denied, that these people were shot by the appellant.

The appellant was a member of the police force and some minutes before the shooting he left the Kuala Lipis police station to go on duty. He was then in possession of a service rifle and ten rounds of ammunition. A few minutes later he was seen in the shop at No: 9, Jelai Street, Kuala Lipis. Two eye-witnesses saw him actually shoot the three deceased. Three other witnesses who were present heard the shots and saw the appellant holding his rifle. Shortly afterwards he was arrested and taken in custody to the Kuala Lipis police station where instead of the ten rounds of ammunition he had had half an hour previously he was found only to have five and his rifle smelt of freshly fired cordite. Later one of the missing rounds of ammunition was found at the shop where the killing had taken place and there were also found four spent cartridges of the same calibre. The medical evidence was to the effect that in each case the fatal shots must have been fired at a range of not less than a yard for there was no trace of powder-burning. There could be no more convincing body of evidence to show that the appellant killed the three dead people.

The only real controversy at the trial was as to the circumstances of the killing. It was common ground that the appellant owed some money to the shopkeeper and that the shopkeeper had called him into the shop to discuss the debt. According to the prosecution witnesses there were then words about this debt and in the event the appellant deliberately fired four shots. Three of these killed the three deceased persons and the fourth one wounded one of the prosecution witnesses.

The appellant's story which, for reasons best known to himself, he gave in the form of an unsworn statement from the dock was to this effect. The shopkeeper called him into the shop and demanded the money that was owing to him. He explained that he was unable to pay. While the discussion was going on he placed his rifle on the counter. Then the shopkeeper became angry and, as he said, scolded him and banged the table. In consequence the rifle fell to the floor. As he bent to pick it up two Chinese came and caught hold of him. There was a struggle and his stomach was pushed against the counter. The barrel of the rifle was then pointing towards the counter. A fat Chinese held the muzzle of the gun and pulled it towards him and the other two Chinese were pushing him towards the counter. He then heard the sound of an explosion and after that he did not know what happened.

He then went on to explain that for some time previously to the incident he had suffered from headaches and had had trouble with his eyes.

On that the defence was put in several ways.

It was never seriously denied that it was the appellant who did the killing. It was, however, argued that the gun had gone off accidentally; that the killing happened under provocation; that it happened in the course of a sudden quarrel; that it happened while the appellant was exercising his right of private defence; or that the gun had gone off accidentally because the safety catch had not been applied and there might be some question of killing by a rash or negligent act. It was expressly stated by counsel on at least two occasions that the defence was not insanity and, indeed, that was a perfectly proper attitude for counsel to adopt for there was no evidence to support any defence of insanity.

The matter was dealt with by the trial judge in a long and careful summing-up.

He made no bones about expressing his own opinion, although he made it clear that the jury were entitled to their own views, that the appellant had killed the three deceased. In view of the evidence we see no cause to quarrel with that. He pointed out, and the correctness of this seems beyond question, that if the appellant had deliberately pointed his rifle at each of the three deceased and killed them, that, considered in isolation, amounted to murder.

He then proceeded to put to the jury the various defences that have been raised, the defence of accident, the defence of provocation, the defence of private defence and the defence of sudden quarrel. It is true, however, he did not put to the jury the defence that what might be involved was an offence of causing death by doing a rash or negligent act.

Considered as a whole, taking the summing-up as a whole, we are satisfied that the whole case was fairly and accurately explained to the jury and we can find no fault, beyond the omission which has been mentioned, in the way of stating the law or stating the relevant facts and their implications.

On that the jury found the appellant guilty.

For ourselves we see nothing to quarrel with in the summing-up except the one point that it did not deal with the possibility of what was done amounting to causing death by a negligent act.

In our view, however, that is an omission which comes fairly and squarely within the scope of the proviso to section 60 of the Judicature Act. It is abundantly clear that the jury accepted the evidence of the prosecution witnesses as to what happened that evening. That is perfectly clear from the fact that they rejected any question of accident, of provocation, of sudden quarrel or of private defence. All of these were, so to speak, alternative ways of looking at the matter if the jury thought that the appellant's story in any way detracted from the evidence for the prosecution.

In the circumstances we are satisfied that the omission to put the question of negligence to the jury could have had no effect whatsoever on their decision because it was based on a set of facts which they had clearly rejected. That being so the case falls fairly and squarely within the scope of the proviso to section 60 of the Judicature Act.

Here I would quote the words of Lord Goddard in the case of *Oster-Ritter* [1]:—

"It is impossible to believe that, even if the proper direction had been given to the jury, they could have come to any conclusion other than that the defendant was guilty of the offence".

These words, in our view, apply to the present case. It is impossible to believe that even had the defence of negligence been put to the jury they could have come to any conclusion other than that the appellant was guilty of the offence of murder having rejected the possibility of his being guilty of culpable homicide not amounting to murder on any of the other grounds that were put to them.

The appeals are dismissed.

Appeals dismissed.

KUPPUSAMY v. GOLDEN HOPE RUBBER ESTATE LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) November 10, 1965]

[K.L. — Federal Court Civil Appeal No. 39 of 1964]

Workmen's compensation — Workman acting contrary to orders of employers — Whether accident arose out and in course of employment — Workmen's Compensation Ordinance, 1952, ss. 4, 27 and 30.

The deceased was employed by the respondent company as a weeding labourer. On the day in question she went to the daily "muster" of work-people which was held prior to commencing the labours of the day with a view to the work-people obtaining instructions. She and others received certain instructions but finding that she had provided herself with the wrong tool for her appointed labours she returned to her house without the permission of anyone in a supervisory capacity. This was against the rules of the estate. At her home she fell down and sustained injuries from which she died. The arbitrator found that workman's compensation was payable to the minor children of the deceased but on appeal to the High Court, the decision was set aside on the ground that at the time she fell the employment of the deceased for the day had not yet commenced and that consequently she had not died by reason of an accident arising out of and in the course of that employment ([1964] M.L.J. 178). The children appealed against this decision.

Held: although the deceased in this case was doing something which she was forbidden to do, the act was done for the purposes of and in connection with her employer's trade and business and therefore the accident must be deemed to have arisen out of and in the course of her employment.

Cases referred to:—

(1) *Noble* v. *Southern Railway Co.* [1940] A.C. 583.

(2) *Fisher* v. *London, Midland and Scottish Railway Co.* [1931] A.C. 351.

(3) *Garrallan Coal Co. Ltd.* v. *Anderson* [1927] A.C. 59, 68.

(4) *Holmes* v. *Great Northern Railway Co.* [1900] 2 Q.B. 409 at p. 411.

(5) *Sharp* v. *Johnson & Co. Ltd.* [1905] 2 K.B. 139 at p. 145.

(6) *Cross, Tetley & Co. Ltd.* v. *Catterall* 18 B.W.C.C. 445, at page 448.

(7) *M'Garvey* v. *Caledonian Stevedoring Co. Ltd.* [1943] 1 All E.R. 611.

(8) *St. Helen's Colliery Co. Ltd.* v. *Hewitson* [1924] A.C. 59, at p. 71.

(9) *Thomas* v. *Pentremawr Colliery Co. Ltd.* 19 B.W.C.C. 331 at p. 338.

FEDERAL COURT.

P. G. Lim (Miss) for the appellant.

M. Shankar for the respondents.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal in proceedings under the Workmen's Compensation Ordinance arising from the death of a woman Sanjayee d/o Murugan who died on Dusun Durian Estate on 2nd October, 1961, leaving two dependent children.

An inquiry was held by a labour commissioner under section 27 of the Ordinance. It was then agreed that the deceased woman was a workman within the meaning of the Ordinance, that she had attended a "muster" of employees on the morning of 2nd October, 1961, that shortly after so doing she fell and sustained injuries whereby she died and that if compensation was payable the amount was $2,880. It would also seem to have been agreed, at least the parties have throughout treated it as being agreed, that the fall was the result of an accident. Agreement, however, was not reached as to